IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3001 OF 2003

S. K. Agrawal ..Petitioner.

Vs.

John Francis D' Costa & Ors. ..Respondents.

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Mr. Kezar A. Kharawala for the Petitioner.
Ms. Imam K. Calcuttawala, AGP for Respondent No.2.

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CORAM: DR. D.Y. CHANDRACHUD, J.

8th September, 2006.

P.C. :

The First Respondent has instituted a complaint of unfair labour practices under items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 against the Third Respondent. The complaint was instituted on 19th December, 2000. The First Respondent sought a declaration that he was entitled to receive his legal dues from the Third Respondent including by way of gratuity. The complaint was originally filed only as against the Third Respondent. An application was moved for amendment of the

complaint and for the impleadment of the Petitioner and for other amendments. The application for amendment was allowed by the impugned order dated 16th April, 2003. The order of the Industrial Court has been challenged in so far as it directs the impleadment of the Petitioner.

The Petitioner was employed by the Third Respondent which is a public limited company registered under the Companies Act, 1913 until 16th February, 2002 when it is stated that he submitted his resignation from service. The resignation was accepted on 18th February, 2002. These facts were set out in the reply filed by the Petitioner to the application for amendment. It was also stated therein that on the termination of the services of the Petitioner, a notice was published in newspapers on 28th February, 2002. The Industrial Court while allowing the application for impleadment noted that after his resignation from service, the Petitioner was engaged as a consultant. Moreover, it appeared that the settlement dated 12th October, 1999 had been signed by the Petitioner on behalf of the company. The Industrial Court was

of the view that no prejudice would be caused to the Petitioner if he were to be impleaded. There is merit in the submission which has been urged on behalf of the Petitioner that the order of the Industrial Court directing the impleadment of the Petitioner is unsustainable. The Petitioner was an employee of the company and the material which has been placed on the record will show that he had ceased to be in employment after his resignation was accepted on 18th February, 2002. In these circumstances, there is absolutely no warrant for impleading the Petitioner as a party to the complaint of unfair labour practices. The complaint has been filed against the management. Merely because the Petitioner was a signatory to a settlement is absolutely no ground for impleading the Petitioner having regard to the nature of the dispute. The Petitioner is neither a necessary nor a proper party. In the circumstances, the impugned order of the Industrial Court dated 16th April, 2003 in so far as it directs the impleadment of the Petitioner as a party Respondent to the complaint is quashed and set aside. The Petition is allowed in the aforesaid terms. In the circumstances, there shall be no order as to costs.